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Closing Commentary – Reimagining Workplace Justice: Advancing Reform, Restoring Balance, and Strengthening Collaboration:

Acknowledging the gains achieved in individual rights and dismissal law, while confronting ongoing challenges such as inefficient disciplinary processes, protracted precautionary suspensions, and the diminishing role of organised labour. This Summit's strategic vision to foster collaboration between government, business, and labour in driving compliance, fairness, and inclusive economic growth.

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INTRODUCTION

- Thirty years since the promulgation of the Labour Relations Act, 66 of 1995.
- The LRA has significantly shaped South Africa's labour relations.



STRATEGIC VISION OF THE ANNUAL LABOUR LAW AND COMPLIANCE SUMMIT

- Labour Law Reform Dialogue
- Research and Thought Leadership
- Stakeholder Engagement and Social Dialogue



OBJECTIVES OF THE LABOUR RELATIONS ACT – SECTION 1

The Act seeks to:

- Advance economic development, social justice, labour peace, and workplace democratisation.
- Give effect to fundamental rights under Section 27 of the Constitution.
- Fulfil South Africa's obligations as an ILO member.
- Provide a framework for:
 - Collective bargaining on wages, employment terms, and industrial policy.
 - Promoting orderly and sectoral-level collective bargaining.
 - Enhancing employee participation in workplace decisions.
 - Ensuring effective resolution of labour disputes.



SPEEDY RESOLUTION OF DISPUTES: A FUNDAMENTAL PRINCIPLE OF THE LRA

- The LRA promotes the expeditious resolution of workplace disputes as a cornerstone of its framework.
- In ***National Education Health & Allied Workers Union (NEHAWU) v University of Cape Town and Others*** [2003] 24 ILJ 95 (CC) at paragraph 31, the Constitutional Court held:

"By their nature labour disputes must be resolved expeditiously and be brought to finality so that the parties can organise their affairs accordingly. They affect our economy and labour peace. It is in the public interest that labour disputes be resolved speedily."



- In ***Avril Elizabeth Home for the Mentally Handicapped v Commission for Conciliation, Mediation & Arbitration and Others*** (2006) 27 ILJ 1644 (LC), the Labour Court confirmed that:

"The LRA contemplates an informal, expeditious disciplinary process requiring, in essence, nothing more than a dialogue and an opportunity for reflection before a decision is taken to dismiss an employee."



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In ***Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others (CCT 228/14) [2015] ZACC 557*** at para 1, Nkabinde J stated:

"Time periods in the context of labour disputes are generally essential to bring about timely resolution of the disputes. The dispute resolution dispensation of the old Labour Relations Act was uncertain, costly, inefficient and ineffective. The new Labour Relations Act (LRA) introduced a new approach to the adjudication of labour disputes. This alternative process was intended to bring about the expeditious resolution of labour disputes which, by their nature, require speedy resolution. Any delay in the resolution of labour disputes undermines the primary object of the LRA. It is detrimental not only to the workers who may be without a source of income pending the resolution of the dispute but, ultimately, also to an employer who may have to reinstate workers after many years."



SOCIAL JUSTICE IN THE WORKPLACE – UBUNTU AND FAIRNESS

Dr Katlego Letlonkane, workplace culture and inclusion specialist at Stellenbosch University, in an article published in the *Mail & Guardian* on Workers' Day, 01 May 2025, emphasised how ubuntu can promote social justice in labour relations.

- Referring to *S v Makwanyane (1995)*, Dr. Letlonkane described ubuntu as a value system that embodies humanness, social justice, and fairness.
- Harnessing ubuntu in workplace relationships can promote restorative justice, procedural fairness, and inclusive decision-making.



In ***Old Mutual v Gumbi* [2007] SCA 52 (RSA)** at paragraph 7, the Supreme Court of Appeal held:

"In this context fairness must benefit both the employee and the employer. The process of determining the actual content of fairness in matters such as this involves the balancing of competing and sometimes conflicting interests of the employee, on the one hand, and the employer on the other. The facts of a particular case determine the weight to be attached to such interests on each side of the scale."



In ***Slagment (Pty) Ltd v Building, Construction and Allied Workers' Union and Others*** 1995 (1) SA 742 (A) at 755B-C, the SCA held:

"It is within the province of the employer who holds a disciplinary enquiry to determine its form and the procedure to be adopted, provided always that they must be fair. Fairness requires, inter alia, that the employee should be given an opportunity of meeting the case against him: the employer must obey the injunction audi alteram partem."



PROTRACTED PRECAUTIONARY SUSPENSIONS: LEGAL STANDARDS AND CASE LAW

- Suspensions often exceed reasonable timelines without justification.
- In ***Allan Long v South African Breweries (Pty) Ltd* [2019] 6 BLLR 515 (CC)**: Court ruled no pre-suspension hearing is required where suspension is precautionary and with full pay.
- In ***Mogothle v Premier of the North-West Province* [2009] 4 BLLR 331 (LC)**: the LC as per Van Niekerk J set out three criteria for fairness in precautionary suspension:
 - Prima facie serious misconduct.
 - Objective reason to bar access to the workplace.
 - Opportunity to be heard prior to suspension.
- Under ***PSCBC Resolution 1 of 2003***, disciplinary hearings must commence within 60 days of suspension—yet this is often breached.



DPSA Report (2023/24) revealed the following:

Duration on Suspension	Number of Cases
1–2 years	32
2–3 years	16
3–4 years	1
4–5 years	4
5–6 years	1
Total	54



SCHEDULE 8: DRAFT CODE OF GOOD PRACTICE ON DISMISSAL – CURRENT STATUS

- Recently published in draft form for public comment by the Minister of Employment and Labour.
- Subject to change based on stakeholder input.
- Key emphasis on:
 - employers and employees should treat one another with mutual respect.
 - employment justice.
 - expeditious resolution of disputes.



Key emphasis on:

- procedural fairness, particularly in cases involving small businesses, poor work performance, and
- incapacity due to ill health or injury



INEFFECTIVE INTERNAL APPEALS AND DELAYED FINALITY

Stokwe v MEC for Education, EC [2019] 6 BLLR 524 (CC):

- Appeal delayed for five years under the Educators Act.
- Constitutional Court found procedural unfairness despite a substantively fair dismissal.
- Reinforced the principle of speedy resolution and administrative finality.



PROPOSED SOLUTIONS AND THE WAY FORWARD

- **Simplify and Promote Speedy Resolution of Disputes:**

Review internal disciplinary, grievance, and appeal policies to eliminate delays and promote efficiency.

- **Written Representations in Disciplinary Hearings:**

Promote use of written submissions in appropriate misconduct cases to expedite finality and reduce formality where possible.

In National Union of Metalworkers of SA on behalf of Motloung & others v Polyoak Packaging (Pty) Ltd & others (2025) 46 ILJ 552 (LAC), Van Niekerk JA observed:



'Finally, the present matter warrants the observation that it illustrates, in stark terms, the dysfunctionality of the statutory dispute-resolution system. The strike that gave rise to the present dispute occurred six years ago. The employees were dismissed after a four-day disciplinary hearing during which both parties were represented by attorneys. The outcome of that enquiry, conducted as it was by an independent and experienced person who happens to be a senior commissioner in the CCMA, counted for nothing, except to satisfy the requirement of fair procedure. The entire exercise was repeated before the arbitrator a year later in a duplicated process where, for Polyoak at least, the same witnesses gave the same evidence as to the same events. That process was completed more than three years after the date of dismissal. The system of simple, rapid and relatively informal access to labour justice that the LRA sought to establish is undermined both by the duplication in process and the time taken to bring the dispute to some form of finality.'



- **Incorporate Discipline and Grievance Management into Performance Metrics:** All managers should have these responsibilities appraised as part of their performance contracts.
- **Abolish Ineffective Internal Appeal Structures:** Encourage direct access to statutory dispute forums (e.g. CCMA, Bargaining Councils) instead of prolonged internal appeals.
- **Decriminalise Labour Law:** Remove unnecessary procedural formalism and restore workplace discipline to an internal governance issue rather than a quasi-legal battlefield.
- **Digitise and Track Disciplinary Progress:** Introduce internal monitoring systems to track timelines, outcomes, and bottlenecks in disciplinary and grievance cases.
- **Capacity Building:** Train line managers and HR practitioners on effective, lawful, and fair management of workplace discipline and conflict.



THANK YOU



Q & A

